88R18894 MLH-F

By:  Meyer, Plesa H.B. No. 4641

Substitute the following for H.B. No. 4641:

By:  Capriglione C.S.H.B. No. 4641

A BILL TO BE ENTITLED

AN ACT

relating to the collection of consumer debt incurred by certain individuals as a result of identity theft.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Subchapter D, Chapter 392, Finance Code, is amended by adding Section 392.308 to read as follows:

Sec. 392.308.  CONSUMER VICTIM OF IDENTITY THEFT. (a) In this section:

(1)  "Family violence" has the meaning assigned by Section 71.004, Family Code.

(2)  "Human trafficking" means conduct that constitutes an offense under Section 20A.02, Penal Code.

(3)  "Identity theft" means:

(A)  a violation of Section 521.051, Business & Commerce Code, or a substantially similar federal law or law in another state; or

(B)  a criminal offense described by Section 32.51, Penal Code, or a substantially similar federal law or law in another state.

(4)  "Person with a disability" has the meaning assigned by Section 48.002, Human Resources Code.

(b)  This section does not apply to consumer debt that is a home loan, as defined by Chapter 343.

(c)  A creditor, debt collector, or third-party debt collector may not attempt to collect a consumer debt or a portion of a consumer debt if the consumer provides:

(1)  a criminal complaint alleging the commission of an offense under Section 32.51, Penal Code, or a substantially similar federal law or law in another state, for which the consumer was a victim, accompanied by a statement identifying the consumer debt or the portion of consumer debt that resulted from the offense;

(2)  a court order issued under Section 521.103, Business & Commerce Code, or a substantially similar federal law or law in another state, declaring the consumer a victim of identity theft; or

(3)  if the consumer is a victim of family violence, a victim of human trafficking, or a person with a disability, an affidavit or unsworn declaration under Chapter 132, Civil Practice and Remedies Code, declaring the consumer a victim of identity theft.

(d)  An affidavit or unsworn declaration under Subsection (c)(3) must include:

(1)  a statement that the consumer is a victim of identity theft;

(2)  documentation verifying the consumer's identity, which may include a copy of the consumer's passport or a copy of a driver's license or state identification card issued to the consumer by the Department of Public Safety;

(3)  a copy of a Federal Trade Commission identity theft victim's report, completed, signed, and filed by the consumer:

(A)  affirming that the consumer is a victim of identity theft; and

(B)  identifying the consumer debt or affected portion of the consumer debt incurred as a result of identity theft; and

(4)  supporting documentation that the consumer is:

(A)  a victim of family violence, as demonstrated by:

(i)  a copy of one or more of the following orders protecting the tenant or an occupant from family violence:

(a)  a temporary ex parte order issued under Chapter 83, Family Code;

(b)  a protective order issued under Chapter 85, Family Code; or

(c)  an order of emergency protection under Article 17.292, Code of Criminal Procedure; or

(ii)  a copy of documentation of the family violence against the tenant or an occupant from:

(a)  a licensed health care services provider who examined the victim;

(b)  a licensed mental health services provider who examined or evaluated the victim; or

(c)  an advocate as defined by Section 93.001, Family Code, who assisted the victim;

(B)  a victim of human trafficking, as demonstrated by:

(i)  a determination from a federal, state, or tribal governmental entity;

(ii)  a determination from a nongovernmental organization authorized to make a determination that a consumer is a victim of human trafficking by a governmental entity under Subparagraph (i);

(iii)  a determination from members of a human trafficking task force, including a victim service provider affiliated with a nongovernmental organization or task force that is authorized to make a determination that a consumer is a victim of human trafficking by a governmental entity described by Subparagraph (i);

(iv)  a determination that the consumer is a victim of human trafficking from a court of competent jurisdiction in a case where the issue of whether the consumer is a victim of human trafficking is a central issue of the case; or

(v)  a statement attesting that the consumer is a victim of human trafficking, signed or certified by the consumer and a person described by Subparagraph (i), (ii), (iii), or (iv); or

(C)  a person with a disability.

(e)  A creditor, debt collector, or third-party debt collector who receives notice that a consumer debt is a result of identity theft from a victim of identity theft in accordance with Subsection (c):

(1)  shall immediately cease efforts to collect the disputed debt or disputed portion of the debt from the victim of identity theft;

(2)  shall send to each person who has previously received a report relating to that debt from the creditor, debt collector, or third-party debt collector notice that the debt is disputed under this section and not collectable from the victim of identity theft;

(3)  may not sell the debt or transfer it for consideration, except to collect the debt from a responsible person other than the victim of identity theft; and

(4)  may, if the disputed debt or disputed portion of the debt is secured by tangible personal property, enforce the security interest under Chapter 9, Business & Commerce Code, but may not collect or seek to collect any deficiency from the victim of identity theft.

(f)  If a creditor, debt collector, or third-party debt collector has a good faith reason to believe that a consumer has disputed a consumer debt or portion of a consumer debt under this section based on a material misrepresentation that the consumer is a victim of identity theft, the creditor, debt collector, or third-party debt collector may file suit in a court of competent jurisdiction to collect the debt from the consumer, unless the alleged perpetrator of identity theft is named in documentation provided by the consumer under Subsection (c).

(g)  In a suit under Subsection (f), the creditor, debt collector, or third-party debt collector must:

(1)  show by clear and convincing evidence that the consumer is not a victim of identity theft; and

(2)  if the consumer prevails in the suit, pay the consumer's court costs, attorney's fees, and damages.

SECTION 2.  This Act takes effect September 1, 2023.